Bobby Jindal
GOVERNOR

Alan Levine
SECRETARY

State of Louisiana

Department of Health and Hospitals

Office of the Secretary

January 16, 2009

The Honorable Charlie Melancon
United States House of Representatives
404 Cannon House Office Building
Washington, D.C. 20515-1803

Dear Representative Melancon:

As a follow-up to the Governor's recent meeting with several members of the Louisiana delegation, I want to provide you with a summary of high priority federal-state issues from the Department of Health and Hospitals. Some of these issues may be contemplated by the stimulus package, while others are ongoing issues where the delegation could be helpful to the state.

We hope this summary is helpful.

FMAP

Because of the federal formula for calculating the federal participation for Medicaid (FMAP), Louisiana's FMAP for Medicaid is slated to decrease from the current rate of approximately 72 percent to approximately 68 percent beginning in October. This will cost the state approximately $200 million of additional state general funds in the next fiscal year. This reduction is based on the surge in economic activity that occurred after Hurricanes Katrina and Rita, which led to an increase in per-capita income. The federal formula is driven largely by the per-capita income, and the formula trails such increases. Thus, by the time the economic activity related to recovery slows, the federal participation begins to decrease. This flaw in the formula penalizes states that have been in recovery – with Louisiana being substantially impacted.

Both the House and Senate stimulus bill contain FMAP relief, which provides a temporary benefit – after which time, the pre-determined FMAP rate, driven by the existing formula, goes into effect. This means for Louisiana that any FMAP increase will end with the new rate of 68 percent or possibly less.

The temporary increase in FMAP, combined with the substantial decrease that will occur at the end of the relief period, presents a budget planning challenge for Louisiana. As noted, we expect an additional need of $200 million just to fill the gap from the decreased FMAP next year. The increase Congress is considering may help us temporarily, but the decrease that follows could be dramatic.

The state of Louisiana, as well as other coastal states impacted by Katrina and Rita or other storms in 2004 and 2005, (Florida, Alabama, Mississippi and Texas), would benefit from being able to avoid, for at least a three-year

period, any decrease in FMAP from our current rate of federal participation. Any decrease during this period clearly penalizes our state for recovery-related activity. By having at least a three-year floor, this will allow for the effects of Hurricanes Katrina and Rita on the state's per-capita income to normalize. The state certainly welcomes any additional relief related to FMAP and would certainly be supportive if Congress wishes to include provisions requiring states to develop reforms that improve the performance of the Medicaid programs, should such provisions be considered.

SCHIP Renewal

Reauthorizing SCHIP at an adequate funding level is critical to Louisiana's LaCHIP program for uninsured children under age 19. Enrollment in LaCHIP stands at 125,699 with 99 percent of those children in households below 200 percent of the federal poverty level. SCHIP has been a major factor in the reduction in uninsured children in Louisiana from more than 20 percent to 5.4 percent according to the 2007 Louisiana Household Insurance Survey. Louisiana's rate of uninsured children remains extremely low, with most of the uninsured population being covered at or below 250 percent of the federal poverty level. At its current levels, SCHIP has been successful in Louisiana in reducing the number of uninsured children.

Louisiana supports the reauthorization of SCHIP.

Funding for Federally Qualified Health Centers (FQHCs)

Louisiana is making significant investments in its primary care infrastructure. Given our large number of citizens who are uninsured or on Medicaid, expansion of FQHCs in both rural and urban areas is critical for Louisiana. During this time of economic downturn, an increasing number of individuals will be in need of the services that FQHCs provide.

While President Bush increased funding for FQHCs during his administration, only 42 percent of Louisiana's applications were approved in the latest funding round. Many of Louisiana's unfunded applications had been submitted on multiple occasions and received very high reviews (in the mid-90s out of 100 points), yet the cut off point for funding was set extremely high.

The House version of the stimulus package contains $1.5 billion for community health centers. We request that previous FQHC applicants receiving high scores, but were unfunded in the last round, be given preference in subsequent rounds; and that strong consideration be given to new access sites in states, such as Louisiana, with high levels of extreme poverty and uninsurance.

Health Information Technology (HIT)

The State of Louisiana and our health care stakeholders are making significant investments in health information technology and the implementation of the patient centered medical home as a means of improving patient care and managing health care costs. Collaborative and coordinated efforts to promote health information exchange, the implementation of electronic health records and the collection of provider and health plan data to promote quality all position Louisiana as a national leader in HIT.

Widespread adoption of health information technology – especially in small provider practices that are currently not able to afford its adoption – is critical to local and national health care reform. In 2008, Governor Jindal and the Louisiana Legislature dedicated $18 million to health information exchange and electronic medical records, and Louisiana was one of only twelve Department of Health & Human Services pilot sites competitively chosen

nationally to implement a Medicare incentive program for primary care physicians to adopt and use electronic health records. Furthermore, the multi-stakeholder Louisiana Health Care Quality Forum is nationally one of only twenty-four Agency for Healthcare Quality and Research "Charter Value Exchanges," which have the mission of promoting interoperable health information technology.

Louisiana has a strong public-private leadership structure in place working to support the implementation of interoperable health information technology state-wide. We are well positioned to make effective use of funds dedicated for HIT in the stimulus package.

The House version of the stimulus bill contains $20 billion for Health Information Technology. The methodology for how these dollars are distributed is important, yet unknown at this time. To support stimulus package goals of both short term stimulus and investment, we strongly encourage that in addition to hardware and software for electronic health interchange and electronic health records, significant dollars (at least 20-25 percent of the funds) be available for technical assistance, business practice redesign, and to backfill lost revenue as physician practices convert to EHR. These dollars will certainly be useful—and spent—in Louisiana. The state also recommends that software and hardware must meet standards for interoperability, privacy and security, quality improvement, and sustainability. These standards should support the NCQA Patient Centered Medical Home guidelines and the HIT funds should support the expansion of state-wide initiatives currently underway such as the Louisiana Health Information Exchange (LaHIE) and the Louisiana Rural Health Information Exchange (LaRHIX). Without knowing the methodology for distribution, Louisiana would suggest that, ***given our current level of financial commitment with non-matched state dollars, we have proven we are one of the leading states committed to HIT and our share of the funding should be substantial.***

Louisiana's 1115 "Louisiana Health First" Waiver

Louisiana's health care system has long been ranked very poorly in terms of our outcomes. After several months of work with the U.S. Department of Health and Human Services (DHHS) and local stakeholders, the Louisiana Department of Health & Hospitals was provided the authority by the Louisiana State Legislature to submit to DHHS an 1115 Waiver to reform our health care system for the poor and uninsured. The major components of this waiver include expansion of access to private insurance financed through the Medicaid program for up to 106,000 uninsured individuals, implementation of nationally tested and proven integrated care networks in Medicaid accountable for health care outcomes and efficiency, and investment in community-based safety net clinics and health information technology.

A rapid approval of the waiver by DHHS and the Administration will allow Louisiana to continue on the path to improving the outcomes in our health delivery system.

Settlement of Louisiana Disallowances

The State of Louisiana is currently exposed to the repayment to DHHS of approximately $771 million, which represents the federal share of two pending disallowances and another potential disallowance not yet issued. The pending disallowances have been appealed to the DHHS Departmental Appeals Board with decisions expected within the next six months – where precedent indicates it is unlikely we will prevail:

- $289 million in federal funds that the Office of Risk Management allegedly used to pay insurance premiums, which DHHS alleges was improper. Interest is accruing at over $60,000 per day.
- $120 million in federal funds paid as part of the Nursing Home Intergovernmental Transfer (IGT) program, which CMS alleges was contrary to federal regulations.

The potential disallowance that has not been issued while the State continues negotiation on Medicaid reform involves $362 million in federal Disproportionate Share Hospital (DSH) funds paid to the LSU public hospitals, which CMS alleges was in excess of allowable costs.

Louisiana's DHH proposed to DHHS, as part of the recently submitted Louisiana Health First waiver application, that $221 million of the amount due be reduced (and Louisiana would invest the saved dollars into our health care system). In addition, Louisiana is requesting the freezing of interest, which would result in five year savings of another $100 million and the extension of any eventual repayment over five years. As a relatively rural and low-income state with a long history of poor health outcomes that has also been dealt the consequences of four major hurricanes in three years, we are asking for the federal government to permit these dollars to be invested into our health care system, which they were originally intended to be used for.

Training Primary Care Providers

Most of Louisiana is designated a primary care shortage area, yet Louisiana universities graduate relatively few general practice primary care physicians.

While National Health Service Corps funds are useful in attracting primary care physicians to shortage areas on a short term basis, there is a widely accepted need to attract more minorities and students with rural backgrounds to medical school and to then attract them to primary care residencies in underserved areas.

Significantly increasing medical school scholarships for students likely to commit or committed to general primary care in underserved areas, providing salary and community support for primary care residency programs in underserved areas and through community health centers, and providing direct support for the creation of primary care deans within schools of medicine will serve both the short term stimulus and long term investment goals of the stimulus package. Louisiana would benefit from $15 million to apply to these programs.

Medicaid Certification of New Healthcare Facilities

Louisiana, as are most states, is under contract with the federal Centers for Medicare and Medicaid Services to perform federal survey and certification of health care providers. Federal certification is required for providers to receive Medicare reimbursement. Per a November 5, 2007 memorandum, CMS has effectively frozen initial certification of new providers by assigning them the lowest priority (Tier IV). CMS is requiring that all other survey activity in Tiers I-III be completed first, yet the funds provided by CMS to do so are not sufficient.

Louisiana law allows for DHH to assess providers a consensual fee if the state agency's budget is not sufficient to perform all the initial surveys requested. CMS will not recognize these surveys unless convinced there is a need for the facility – essentially a federally-mandated moratorium on new facilities without the resources for the state to provide a needs review.

This has serious implications for health care quality and access in Louisiana. For example, in 2007 the state legislature appropriated $10 million in funds to construct and equip rural health clinics in primary care shortage areas, yet we have had difficulty obtaining permission to proceed with certification. The same is true for new psychiatric service providers. While the state has made significant new investments this year ($80 million) to improve our historically inadequate behavioral health system, attempts to increase behavioral health providers are thwarted by the CMS stance.

Louisiana is requesting that CMS allow the initial surveys at the provider's expense as was occurring before the directive from CMS.

Reversal of Rule Limiting Use of DSH Funds for Rural Health Clinics

A recently enacted rule by CMS now prohibits the use of Disproportionate Share Hospital (DSH) funding by rural hospitals for the support of its affiliated Rural Health Clinics. This rule will lead to the closure of Rural Health Clinics in several primary care shortage areas of the state that have very high levels of uninsured patients. During this time of economic downturn, even more individuals will be in need of these clinics.

The state is requesting that this rule be reversed, or that alternative sources of funding for primary care in rural areas be made available.

Additional Wage Index Relief for Hurricane Affected Hospitals

The recently awarded federal SSBG grant of approximately $130 million dollars for relief from four hurricanes in three years will be helpful to providers that have struggled financially as a result of the storms, and the state recognizes the intent to include the hospitals affected by Hurricanes Katrina and Rita in the package.

We expect that, until the Medicare Wage Index adjustment is made, hospitals will continue to appeal to congress for additional relief. We support efforts by these hospitals for relief related to the effects of Hurricanes Katrina, Rita, Gustav and Ike.

Medicare Physicians Reimbursement Disparities

For reimbursement purposes, Medicare divides the state into two regions – Greater New Orleans (Orleans, Jefferson, St. Bernard and Plaquemines parishes) and the rest of the state. Physicians in Greater New Orleans generally receive higher reimbursement than physicians elsewhere, including the North Shore. Although part of the Greater New Orleans Metropolitan Statistical Area, and certainly with more in common with the cost of doing business in New Orleans than with the rest of the state, the North Shore area is not considered part of the Greater New Orleans region for purposes of Medicare physician reimbursement.

Combined with post-Katrina programs designed to attract physicians to health professional shortage areas in Greater New Orleans, this has created a substantial problem for retention of physicians in the North Shore, and has exacerbated a problem only made worse by government programs designed to help Greater New Orleans. The North Shore faces a potential out-migration of physicians simply because the federal designation of the Medicare area excludes the North Shore from the New Orleans region, and thus the physician rates are lower.

Medicare's procedure for reclassifying North Shore physicians as part of the Greater New Orleans region for reimbursement purposes requires that the state remain revenue neutral in its total Medicare physician reimbursement. As currently calculated by Medicare, this would require lowering state-wide Medicare reimbursements to all non-Greater New Orleans physicians.

The uniqueness of the situation on the North Shore cannot be in dispute. The formula for calculating the physician rates, combined with government support for rates in New Orleans, has created a flawed marketplace where the costs for physicians on the North Shore are not being adequately reimbursed. The huge increase in labor costs in New Orleans had a major impact on the North Shore as well. Costs to physicians to staff their

practices on the North Shore increased dramatically as the competition to keep staffing from relocating to New Orleans intensified. The North Shore market is just simply too close to New Orleans to assume the costs are substantially different than what is being experienced in Greater New Orleans.

The state wishes to negotiate with the Centers for Medicare and Medicaid Services an alternative to the current situation, which applies budget neutrality rules to a situation exacerbated by Hurricane Katrina and the subsequent government interventions that did have unintended consequences.

While some of these issues are under consideration now in Congress, we continue to seek resolution on the others with DHHS/CMS. We certainly will keep you informed of our discussions, and invite any assistance you feel you can provide.

In the next few days, we will be reaching out to your staff to arrange a briefing with you on these issues and some of our other efforts. Please, in the meantime, contact us with any questions or areas where you think we can be helpful.

All the best for a successful new year.

Cordially,

Alan Levine
Secretary

Cc: Bobby Jindal, Governor
Angele Davis, Commissioner of Administration
Paul Rainwater, Executive Direcotor, Louisiana Recovery Authority
Joel Chaisson, Louisiana Senate President
Jim Tucker, Speaker of the Louisiana House of Representatives
Willie L. Mount, Louisiana Senator, Health and Welfare Committee Chairman
Kay Kellogg Katz, Louisiana Representative, Health and Welfare Committee Chairman
Mike Michot, Louisiana Senator, Finance Committee Chairman
Jim Fannin, Louisiana Representative, Appropriations Committee Chairman